

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3966 OF 2004

Shaikh Ashfaque Mohammed Ali ..Applicant

versus

1. Union of India

2. The State of Maharashtra ..Respondents

Mr. A. Khan for the Applicant.

Mr. D. N. Salvi for the Respondent No.1.

Mr. K. V. Saste, A.P.P. for the Respondent No.2.

CORAM : A.M. KHANWILKAR, J.

DATE : 20TH OCTOBER 2004.

P.C. :

1. This application is filed by accused No.2 for being released on bail on the ground of parity. The argument of the applicant proceeds on the basis that accused No.1 has been released on bail by this court's order dated 16.5.2002 in Criminal Application No. 1816 of 2002 and which decision has been confirmed by the Supreme Court on 4.4.2003. However, counsel for the applicant fairly accepts that the sole basis on which the accused No.1 came to be released on bail is that Single Judge of this

Court was of the opinion that statement of the accused recorded under Section 67 of the NDPS Act would amount to confessional statement and hit by Article 20(3) of the Constitution. This view has now been reversed by the Division Bench of our High Court in the case of **Intelligence Officer DRI vs. Amjad Hussein Khan & Anr.** reported in 2003 ALL MR (Cri) 1037. If it is so, the basis on which the accused No.1 was enlarged on bail cannot be invoked in favour of the accused No.2 because it is no more subsisting.

2. To get over this position, counsel for the applicant contends that the Union of India had taken up the matter in appeal to the Supreme Court against the order of bail in favour of accused No.1, after the decision of the Division Bench of our High Court; even then the Supreme Court has rejected the appeal preferred by the Union of India. This submission does not commend to me. For there is nothing in the order of the Supreme Court, while rejecting the appeal preferred by the Union of India the order dated 4.4.2003 passed in Special Leave to Appeal (Criminal) No. 5231 of 2002 to preclude this court from following the law expounded in the decision of the Division Bench referred to above. Suffice it to observe that the legal position now having been established by the decision of our High Court in Intelligence Officer DRI (supra) the ground

as pressed cannot be the basis for releasing the applicant herein on bail.

3. Accordingly this application is dismissed. However, the trial court is directed to finally dispose of the trial as expeditiously as possible as High Court expedited matter. Learned counsel for the applicant states that this is one of the oldest case. The trial court may examine that aspect and if it is so may pass necessary directions.

A.M. KHANWILKAR, J.